

"The United Nations Security Council and the maintenance of peace and international security".

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Introduction

Born from the rubble of the Second World War; following the failure of the League of Nations, which was unable to prevent this tragedy, and in order to *save future generations from the scourge of war which twice in the space of a human life has inflicted humanity of untold suffering*¹, the United Nations has given itself the principal mission of guaranteeing the maintenance of peace and security in the world².

To achieve this - this mission is at the heart of its mandate³ - it has established the Security Council, a body provided with the necessary means to, yet proportionate to, achieving this mission. Central to this article is an analysis, from a theoretical and legal point of view, of the means available to the Security Council in its mission of maintaining peace and international security on the one hand (1) and the implementation of its powers and the difficulties it encounters on the other hand (2).

1. The means of the United Nations Security Council in the maintenance of peace and international security.

For the United Nations, the Security Council is a means to guarantee peace and security in the world. But this *Way-organ* itself needs other means to carry out the mission entrusted to it. Thus, it has, on the one side, the power of decisions with binding legal effects and, on the other side, the power of sanction against any threat or breach of peace and international security.

The first power is enshrined in International Law by Article 25 of the United Nations Charter⁴. These decisions are based on Article 4 of the Charter, which gives States the possibility of becoming a member of the Organization subject to accepting and implementing the obligations arising from this Charter. In a broader sense, these obligations also include decisions taken by the Security Council. Let us also quote articles 48⁵ and 103⁶ of the same text.

¹ This testament is contained in the preamble of the United Nations Charter

² The United Nations Charter makes this objective the main, lays down in chapter I, in the first line: the purposes of the United Nations are: to maintain international peace and security and to this end: to take effective collective measures to prevent and avert threats to peace and to repress any act of aggression or other breach of the peace, and to achieve, by peaceful means, in accordance with the principles of justice and international law, the adjustment or settlement of disputes or situations of an international character which could lead to a breach of peace.

³ United Nations Department of Public Information, United Nations ABC, New York 2001, p.77

⁴ This article states that the members of the Organization agree to accept and apply the decisions of the Security Council in accordance with the Charter.

⁵ The measures necessary for the implementation of these decisions of the Security Council for the maintenance of international peace and security shall be taken by all members of the United Nations or some of them, in the opinion of the Council.

This foundation may also be based on the advisory opinion of the International Court of Justice on Namibia of 21 June 1971. Indeed, the Court stated that "when the Security Council adopts a decision under Article 25 of the United Nations Charter, it is the responsibility of the Member States to abide by that decision, including the members of the Security Council who voted against it and the members of the United Nations who do not sit on the Council"⁷.

Moreover, since it is the sanction that ensures the effectiveness of a rule of law, Chapter 7 of the Charter sets out a number of actions to be taken against any threat or breach of the peace. Under article 39, the Security Council shall determine the existence of a threat to peace, a breach of the peace or an act of aggression and make recommendations or decide what measures will be taken to maintain or restore peace and international security. There is a distinction between the measures of peaceful coercion in article 41 and non-peaceful measures in article 42.

2. Implementation of means

Implementation always raises a double question about effectiveness and efficiency. In fact, by measuring the difference between what is carried by the text and what is done in practice, the effectiveness of the measures taken by the Security Council to react against an act of aggression, breach of the peace and threat to peace may be faced with many difficulties intrinsic to the organ itself.

Unanimity being the mode of decision-making and the right of veto being recognized in the five permanent states for political and economic interests, we have witnessed the impotence or the delay of the Security Council in the face of peace and international security. In addition, the 5 permanent members of the Security Council are the most powerful states in the world. The peace system that we have chosen here is therefore that of imposed peace, where, for fear of being wiped out, non-powerful States are obliged to respect the interstate compact.

But, unfortunately, we can see the fragility of this peace by deterrence because, not only do these powerful people measure and divide, but above all, besides the force, there must be justice without which there is no peace. Justice presupposes equal treatment according to what everyone deserves. However, decisions of the Council fall and have effect only on "small states" among the powerful do not find a sponsor or with which none finds any interest.

Conclusion

In the end the world is still at risk of a world-wide war. The United Nations can attempt at avoiding this by, for starters, rethinking its organization and functioning - that of the Security Council in particular- which calls for a reform⁸ which takes into account the evolution of the world and the needs of the all Member States.

⁶ This article poses the principle of primacy of the decisions of the United Nations Organization over those internal to each state.

⁷ International Court of Justice, Reports 1971, p.53

⁸ Some countries, such as France, propose the rationalization of the right of the Veto and the enlargement of the circle of permanent members of the Security Council. We think it would be better to think of the states most affected by insecurity and war like African countries.